IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALYSSA CARTON,

Plaintiff. Case No. 1:17-CV-00158-KBM/SCY

v.

HOLIDAY BOWL, INC.

Defendant.

HOLIDAY BOWL, INC.

Defendant/Counter-Plaintiff

v.

ALYSSA, CARTON,

Plaintiff/Counter-Defendant

**DEFENDANT HOLIDAY BOWL'S ANSWER TO**
**COMPLAINT AND COUNTERCLAIM AGAINST PLAINTIFF**

Defendant Holiday Bowl, Inc. (hereinafter "Holiday Bowl") by and through its attorney of record, Erika E. Anderson, hereby responds to Plaintiff Alyssa Carton's (hereinafter Plaintiff) complaint for damages and affirmatively defends:

**JURISDICTION AND VENUE**

1. Holiday Bowl admits the allegations contained in Paragraph 1 of Plaintiff's Complaint.

2. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 2, and therefore denies the same.

3. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 3, and therefore denies the same.

4. In response to Paragraph 4, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

5. In response to Paragraph 5, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

**STANDING**

6. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 6, and therefore denies the same.

7. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 7, and therefore denies the same.

8. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 8, and therefore denies the same.

9. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 9, and therefore denies the same.

10. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 10, and therefore denies the same.

11. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 11, and therefore denies the same.

12. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 12, and therefore denies the same.

13. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 13, and therefore denies the same.

14. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 14, and therefore denies the same.

15. Holiday Bowl denies the allegations contained in Paragraph 15, of Plaintiff's Complaint.

## THE ADA AND ITS IMPLEMENTING REGULATIONS

16. In response to Paragraph 16, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

17. In response to Paragraph 16, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

18. In response to Paragraph 18, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

19. In response to Paragraph 19, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

20. In response to Paragraph 20, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

21. In response to Paragraph 21, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

22. In response to Paragraph 22, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

23. In response to Paragraph 23, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

24. In response to Paragraph 24, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

25. In response to Paragraph 25, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

26. In response to Paragraph 26, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

27. In response to Paragraph 27, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

28. In response to Paragraph 28, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

29. In response to Paragraph 29, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

**FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

30. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 30, and therefore denies the same.

31. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 31, and therefore denies the same.

a. In response to Paragraph 31 subpart (a), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

b. In response to Paragraph 31 subpart (b), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

c. In response to Paragraph 31 subpart (c), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

d. In response to Paragraph 31 subpart (d), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

e. In response to Paragraph 31 subpart (e), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

f. In response to Paragraph 31 subpart (f), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

g. In response to Paragraph 31 subpart (g), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

h. In response to Paragraph 31 subpart (h), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

i. In response to Paragraph 31 subpart (i), Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

32. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 32, and therefore denies the same.

33. Holiday Bowl denies the allegations contained in Paragraph 33, of Plaintiff's Complaint.

34. Holiday Bowl denies the allegations contained in Paragraph 34, of Plaintiff's Complaint.

35. Holiday Bowl denies the allegations contained in Paragraph 35, of Plaintiff's Complaint.

36. Holiday Bowl incorporates herein by reference its responses to the foregoing allegations.

37. In response to Paragraph 37, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

38. In response to Paragraph 38, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

39. In response to Paragraph 39, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

40. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 40, and therefore denies the same.

41. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 41, and therefore denies the same.

42. Holiday Bowl denies the allegations contained in Paragraph 42, of Plaintiff's Complaint.

43. In response to Paragraph 43, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

44. Holiday Bowl denies the allegations contained in Paragraph 44, and incorporates herein by reference its responses to the foregoing allegations.

45. Holiday Bowl is without information or knowledge sufficient to form a belief as to the truth of the matters alleged in Paragraph 45, and therefore denies the same.

46. Holiday Bowl denies the allegations contained in Paragraph of Plaintiff's Complaint.

47. In response to Paragraph 47, Holiday Bowl states that the allegations call for a legal conclusion, which therefore, require no response.

48. With regard to any allegation not specifically addressed herein, Holiday Bowl denies the same.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim for which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff may have failed to mitigate her damages, thereby barring recovery herein or reducing such recovery.

## THIRD AFFIRMATIVE DEFENSE

Holiday Bowl's actions were lawful and there is no specific allegation in the Complaint to show otherwise.

## FOURTH AFFIRMATIVE DEFENSE

At all material times hereto, Holiday Bowl acted in good faith.

WHEREFORE, Holiday Bowl, having answered Plaintiff's Complaint, requests that the Complaint be dismissed with prejudice, and that Holiday Bowl, be awarded costs and attorney's fees as the Court deems just and proper.

## HOLIDAY BOWL'S COUNTERCLAIMS AGAINST COUNTER-DEFENDANT ALYSSA CARTON

## JURISDICTION AND VENUE

1. Holiday Bowl is a corporation doing business in Bernalillo County, New Mexico.

2. Upon information and belief, Plaintiff/Counter-Defendant is a resident in Bernalillo County, New Mexico.

3. The events giving rise to these Counterclaims occurred in Bernalillo County, New Mexico.

4. The Court has jurisdiction over the parties.

5. Venue is proper in this Court.

## FACTS COMMON TO ALL CLAIMS FOR RELIEF

1. Upon information and belief, Plaintiff/Counter-Defendant, was hired by her attorney, Sharon E. Pomeranz, by answering an advertisement on a website to visit approximately one hundred and two (102) businesses located along and near Lomas and Eubank Boulevards in

Bernalillo County, New Mexico with the sole intent of pursuing American with Disabilities violation lawsuits.

2. Upon information and belief, Plaintiff/Counter-Defendant had no true intention of conducting business with the businesses she visited.

3. Plaintiff/Counter-Defendant filed approximately one hundred and two (102) complaints in Federal Court without filing and serving the summons in the manner prescribed by the Federal Rules of Civil Procedure.

4. Plaintiff/Counter-Defendant mailed the summons, which had not been filed or conformed by the Court to all Defendants, leading Holiday Bowl, and many other business owners, to believe they were obligated to answer the Complaint filed against them.

5. Plaintiff/Counter-Defendant admitted in an interview with KOB 4 News on April 18, 2017 that she believes it was "bad business" to bring the lawsuits and that she now feels she was "used" by her attorney.

6. This type of "drive-by" lawsuits have been tried in other states recently. The State of Arizona passed a law specifically to safeguard small businesses from this type of harassment and extortion.

**COUNT I**
**MALICIOUS AVENUE OF PROCESS**

7. Holiday Bowl incorporates and realleges Paragraphs 1 through 6 of its Counterclaim as set forth full herein.

8. Plaintiff/Counter-Defendant engaged in improper conduct by filing a Complaint against Holiday Bowl without probable cause and without legitimate factual basis to support the claims therein.

9. Upon information and belief, Plaintiff/Counter-Defendant's primary motive in filing the Complaint was to harass Holiday Bowl, as well as several other businesses, and to receive monetary compensation.

10. As a direct and proximate result of Plaintiff/Counter-Defendant's, malicious abuse of process, Holiday Bowl has suffered damages, including the legal expenses in connection with its defense.

Plaintiff/Counter-Defendant's malicious abuse of process was done in bad faith and with wanton disregard for the rights of Holiday Bowl.

Wherefore, Holiday Bowl requests an Order and Judgment of this Court as follows:

a. Compensatory damages in the amount to be proved at trial;

b. Pre-judgment and post-judgment interest as provided by law;

c. An award of punitive damages in an amount to be proved at trial;

d. Award of attorney's fees and costs; and

e. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

THE LAW OFFICES OF ERIKA E. ANDERSON

By *_/s/ Erika E. Anderson_*

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*Counsel for Defendant/Counter-Plaintiff*
*Holiday Bowl, Inc.*

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 27, 2017, I filed the foregoing electronically through the CM/ECF File and Serve System, which caused the following counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Sharon E. Pomeranz
Law Office of Sharon Pomeranz
Santa Fe, NM 87501
sharon@newmexicoada.com
*Counsel for Plaintiff, Alyssa Carton*

By *_/s/ Erika E. Anderson*
Erika E. Anderson